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Paper No.

ELI LILLY & COMPANY  
PATENT DIVISION  
P.O. BOX 6288  
INDIANAPOLIS IN 46206-6288

MAILED

SEP 28 2010

OFFICE OF PETITIONS

In re Patent No. 7,608,629 : DECISION ON REQUEST  
Blanco-Pillado et al. : FOR  
Issue Date: October 27, 2009 : RECONSIDERATION OF  
Application No. 10/552,131 : PATENT TERM ADJUSTMENT  
Filed: October 11, 2005 : and  
Atty Docket No. X-14441 : NOTICE OF INTENT TO ISSUE  
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on November 19, 2009, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by four hundred and fifty-four (454) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by two hundred and twenty-two (222) days is **GRANTED to the extent indicated herein.**

Petitioner has indicated that this patent is not subject to a terminal disclaimer.<sup>1</sup>

The time taken up by the notice of appeal is excluded from the period of B-delay. A notice of appeal was filed on June 6, 2008, and a non-final Office action was subsequently mailed on January 22, 2009: this constitutes 231 days that are *excluded* (not 230 days).<sup>2</sup> The 231 days of the over three year period consumed by appellate review, beginning on October 18, 2008 and

<sup>1</sup> Petition, page 4.

<sup>2</sup> Id. at 3.

ending on October 27, 2009, is *not included*<sup>3</sup> in the B delay (which totals 374 days, not 151<sup>4</sup>). See 35 U.S.C. § 154(b)(1)(B)(ii). Thus, 231 (not 230)<sup>5</sup> days are excluded.

Additionally, the Office agrees with Patentee's argument that an additional period of reduction should be assessed. A defective appeal brief was filed on October 7, 2008, a notice of defective appeal brief was mailed on October 30, 2008, and an acceptable appeal brief was filed on November 5, 2008, which is 29 (not 35<sup>6</sup>) days after the filing of the defective appeal brief. As such, a reduction of 29 days should have been assessed, pursuant to 37 C.F.R. § 1.704(c)(7).

The Office thanks Patentee for his good faith and candor in bringing this to the attention of the Office.

As such, the patent term adjustment is increased by 222 (196 examination delay plus 374 B delay *minus* 231 days of exclusion *minus* 4 overlap *minus* 113 applicant delay) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, Patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **two hundred and twenty-two (222) days**.

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<sup>3</sup> It is noted that on the third page of this petition, Patentee has *added* the period of exclusion to the B delay, instead of *subtracting* the former from the latter.

<sup>4</sup> Petition, page 3.

<sup>5</sup> Id.

<sup>6</sup> Id.

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Telephone inquiries specific to this matter should be directed to Senior Attorney Paul Shanowski at (571) 272-3225.

A handwritten signature in black ink, appearing to read 'Anthony Knight', is written over the typed name.

Anthony Knight

Director

Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE  
**CERTIFICATE OF CORRECTION**

PATENT : 7,608,629 B2

DATED : October 27, 2009

**DRAFT**

INVENTOR(S) : Blanco-Pillado et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 290 days

Delete the phrase "by 290 days" and insert – by 222 days--